

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RODERICK C. MANN,)	
)	
Plaintiff,)	No. C00-5641FDB
)	
vs)	BRIEF IN SUPPORT OF
)	MOTION ALLOWING
AMERICAN AIRLINES,)	EXTENSION OF TIME TO
)	SERVE SUMMONS AND
Defendant.)	COMPLAINT

FACTS

The Complaint herein was filed on or about October 30, 2000. Plaintiff has not effectuated service of the Summons and Complaint on Defendant AMERICAN AIRLINES within the 120 days as required by CR 4(m) which reads in pertinent part as follows:

(m) Time Limit of Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j) (1).

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CV 00-05641 #000000006

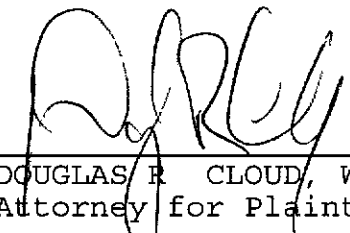
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1 Thus, the applicable Court Rule gives the District
 2 Court discretion to extend the 120 day period of time
 3 within which a Summons is ordinarily required to be served.
 4 If the Court finds "good cause", then the Court has no
 5 discretion as the Rule commands that the Court "shall"
 6 extend the time for service for an appropriate amount of
 7 time.

8 Plaintiff would submit that good cause for the delay
 9 of service has been shown, but, nonetheless, even if good
 10 cause is not found, the Court does have discretion under
 11 the Court Rule to grant additional time to serve the
 12 Summons and Complaint.

13 It should be noted that the Complaint concerns an
 14 Americans With Disabilities Act complaint. It is the
 15 strong policy of the Americans With Disabilities Act that
 16 valid claims be resolved on the merits, not on procedural
 17 technicalities. Thus, Plaintiff does hereby respectfully
 18 request of the District Court that additional time, as
 19 requested in the Motion for Extension of Time, be granted
 20 to allow the Summons and Complaint herein to be served.

21 DATED this 19 day of April, 2001

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 25 DOUGLAS R. CLOUD, WSBA #13456
 Attorney for Plaintiff

26 mann brf

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 BRIEF IN SUPPORT OF MOTION
 ALLOWING EXTENSION OF TIME TO
 SERVE SUMMONS AND COMPLAINT 2

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